



CALIFORNIA RURAL LEGAL ASSISTANCE, INC.

FIGHTING FOR JUSTICE, CHANGING LIVES

June 27, 2019

By electronic mail to:

Manuel Lopez
Public Participation Specialist
Department of Toxic Substance Control
9211 Oakdale Avenue
Chatsworth, CA 91311
Manuel.Lopez@dtsc.ca.gov

Re: DTSC Kettleman Hills Permit Renewal Draft Environmental Document Analysis

Dear Mr. Lopez,

California Rural Legal Assistance, Inc. (CRLA) represents El Pueblo Para el Aire y Agua Limpia (El Pueblo) in the implementation of the August 2016 Settlement Agreement among the California Environmental Protection Agency, the Department of Toxic Substance Control (DTSC), El Pueblo, and Greenaction for Health and Environmental Justice (Greenaction). CRLA submits these comments on the DTSC May 2019 draft Environmental Document Assessment (EDA) for the Kettleman Hills permit renewal application.

I. The Environmental Document Analysis Is Not Supported by Substantial Evidence

a. Legal standard for determination on subsequent EIR

A lead agency or responsible party must prepare a subsequent or supplemental EIR during a discretionary review of a previously-approved project when one of three triggering conditions occur: (1) substantial changes are proposed in the project that will require major revisions of the EIR; (2) substantial changes occur in the circumstances under which the project is being undertaken that will require major revisions in the EIR; (3) new information of substantial importance that was not known and could not have been known when the EIR was certified as complete becomes available. Gov't Code §15162.

A lead agency's determination of whether a subsequent EIR must be prepared for a document must be based on substantial evidence in light of the whole record. Gov't Code §15162 (a). Substantial evidence is defined as "relevant evidence that a reasonable mind might accept as adequate to support a conclusion, or evidence of a ponderable legal significance, reasonable in nature, credible, and of solid value." *Bowman v. City of Petaluma*, 185 Cal. App. 3d 1065, 1072 (1986). The lead agency's determination must be supported by facts. *See River Valley Preservation Project v. Metropolitan Transit Dev. Bd.* 37 Cal. App. 4th 154, 177 (1995).

b. Kettleman Hills permit renewal

The draft EDA states that the renewed DTSC permit for Kettleman Hills would add new work activities in three existing/permitted operations. EDA p. 2. These new activities are described as (1) adding a waste shredder and temporary storage in the Final Stabilization Unit mixing tanks; (2) outdoor repackaging and storage of waste at the PBC Flushing and Storage Unit; and (3) solids and liquids bulking for onsite and offsite treatment and/or disposal at the Drum Storage Unit. *Id.* The EDA, the Site-Specific Water Quality and Soil-Gas Monitoring Plan,

and discussions with DTSC staff also indicate that the permit renewal would result in the addition of more than thirty wells to the project site, to be used for water and soil gas monitoring.

The Draft EDA concludes that none of the proposed new activities will trigger the conditions found in Gov't Code §15162. EDA pp. 17-70. The Draft EDA does not demonstrate that these conclusions are based on facts or substantial evidence. The draft instead makes conclusory determinations without providing sufficient data to support them. Additional information must be included in the EDA so that the document and DTSC's determinations can be evaluated to determine whether there are sufficient data.

i. Air quality

The EDA analysis of the potential air quality impacts from the proposed major permit changes and well-drilling activities is conclusory and not supported by facts. The EDA states that revised operations will not substantially affect facility emissions because "the primary activities that require fueled equipment, including waste delivery trucks, would not change." EDA p. 22. The EDA acknowledges that well-drilling activities would "create additional temporary air pollutant emissions from the well-pad cleaning and well-drilling activities," and there would be temporary construction activity/emissions associated with installation of the new shredder" but concludes that emissions from the facility would not be substantially affected. Id. Emissions from temporary construction activities were deemed significant in the 2009 SEIR, leading to mitigation measure AQ-MM.1.

The EDA fails to cite any facts or data to support this conclusion. It includes no information about the quantity and type of emissions that will result from well-drilling and other proposed activities. CRLA staff asked DTSC for the data on which the EDA consultant made these determinations. DTSC staff stated that "[i]t is reasonable to assume that projected emissions associated with drilling new wells will be significantly lower than the projected (but have already occurred) emissions associated with the construction of a landfill phase."¹ CRLA is aware of no data or facts supporting DTSC's similar determination about this and other proposed new activities such as the installation of a new shredder.

A lead agency is not permitted to determine whether a supplemental environmental document is required based on assumptions. Determinations must be fact-based and supported by substantial evidence in the record. The Kettleman Hills permit application and Site-Specific Water Quality and Soil-Gas Monitoring Plan documents do not include information about the type and quantity of emissions that DTSC anticipates will be produced by the proposed new activities, including but not limited to well-drilling. It is not possible to evaluate whether the determination about a supplemental environmental document is legally adequate. DTSC must provide more information about the anticipated emissions of new activities before making that determination. CRLA is unable to provide further comment until this information is provided.

ii. Hazardous materials

The draft EDA explains that new activities are proposed related to the handling and mixing of hazardous materials in outdoor locations, but concludes that there is no risk of new environmental impacts or significantly increased environmental impacts related to the handling of hazardous waste. This conclusion appears to be based entirely on the assertion that no new types of waste will be handled. EDA p. 46. The analysis in this section is minimal, conclusory, and fails to cite substantial evidence in the record. The EDA also fails to analyze the increased

¹ Email from Wayne Lorentzen, Mary 30, 2019

potential for hazardous waste release into the environment (Impact 9(b)) resulting from mixing and storing hazardous materials outside that were previously conducted inside. The EDA must analyze this potential and provide supporting information and facts, such as the number of outdoor environmental releases that have historically taken place at the facility. It is not possible to provide further analysis of the adequacy of the EDA without additional information.

II. DTSC Must Ensure that Emissions Mitigation Measures Address New Construction and Activities

The Draft EDA cites the 2009 SEIR air quality mitigation measure AQ-MM.1 as a method to mitigate any substantial change to facility emissions resulting from changes in project activities and well-drilling. EDA p. 22. It is not evident from the language of this mitigation measure that it will apply to new construction activities such as the well-drilling project. The emissions-mitigation strategies outlined in AQ-MM.1 apply to “fugitive dust emissions from the B-18 Landfill Expansion and the B-20 Landfill.” The proposed new construction activities are unrelated to the B-18 expansion. DTSC must ensure that mitigation measures applicable to construction are extended to all construction activities and must amend the permit if necessary to achieve this.

III. Additional Comments

i. Recirculate Draft EDA

The current draft does not provide sufficient information to adequately analyze whether an SEIR is necessary. It would not be appropriate for DTSC to make a final determination about an SEIR without including additional information in the EDA and re-circulating the draft EDA for public review. DTSC must provide additional information to comply with the substantial evidence standard and should re-circulate the EDA for a second public review period.

ii. Explain determination on SEIR

DTSC must provide an explanation of the decision not to prepare an SEIR and must include it in an addendum to the EIR, the lead agency’s required findings on the project, or elsewhere in the record. This determination must be supported by substantial evidence. 14 CCR § 15164(e).

iii. Circulate environmental document

DTSC should circulate the environmental document it prepares for public review. DTSC has committed publicly and to El Pueblo and Greenaction that it is committed to meaningful public participation and transparency throughout the permitting process for Kettleman Hills facility. It was appropriate for DTSC to circulate the draft EDA for public review and comment. It is similarly appropriate to provide for public comment any environmental documents prepared under the Kettleman Hills permit renewal process.

Sincerely,

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